FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & JOHN

QUINCY CORPORATION, general partner of FOUR WINDS PLAZA PARTNERSHIP,	)	
Plaintiff,	)	**Civil No. 1998-101**
v.	)	
COST-U-LESS, INC. and CULUSVI, INC.,	)	
Defendants.	)	

ATTORNEYS:

Elchanan I. Dulitz, Esq.
Wharton, NJ
For the plaintiff.

Sharon Schoenleben, Esq.
St. John, U.S.V.I.
For the plaintiff.

Henry C. Smock, Esq.
St. Thomas, U.S.V.I.
For the defendants.

ORDER

GÓMEZ, C.J.

The plaintiff in this matter, Quincy Corporation, general partner of Four Winds Plaza Partnership ("Quincy"), commenced this action in May, 1998. According to the complaint, Quincy and defendant Cost-U-Less, Inc. ("Cost-U-Less") entered into a lease for commercial space. Quincy subsequently brought an action for

debt and restitution against Cost-U-Less in the then-Territorial Court of the Virgin Islands.[1] The parties settled the Territorial Court action and entered into a new lease. The settlement provided that Cost-U-Less could assign its interest in the lease to defendant CULUSVI, Inc. ("CULUSVI") (collectively referred to as the "Defendants"), but that Cost-U-Less would remain liable under the lease. The complaint further alleged that Cost-U-Less did in fact assign its interest to CULUSVI.

According to Quincy, despite demand, the Defendants later fell into arrears on rent due under the parties' settlement. Consequently, Quincy brought this three-count action, seeking a declaration from the Court that the parties' lease had expired and that the Defendants should be deemed holdover tenants. Quincy also sought an injunction to prevent the Defendants from removing certain fixtures the Defendants had allegedly installed on the leased premises. Finally, Quincy requested a judgment in the amount of $44,658, representing the amount of unpaid rent.

The parties thereafter engaged in discovery. In December, 2001, the magistrate judge held a status conference. The record reflects that the parties were in settlement discussions at that time. The magistrate judge held two additional status

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[1] The name of the Territorial Court changed to the Superior Court of the Virgin Islands pursuant to Act of Oct. 29, 2004, No. 6687, sec. 6, § 2, 2004 V.I. Legis. 6687 (2004).

conferences with the parties in January, 2002. The record reflects that the parties were still discussing settlement options. After the second January, 2002, status conference, the record reflects no further activity in this matter for nearly three years.

Consequently, on January 19, 2005, a district judge dismissed this matter without prejudice for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, and ordered this case closed.[2] The record reflects no further activity for nearly twenty months.

On November 8, 2006, Quincy filed a pleading styled as an "Emergency Motion for Relief from Order." In its motion, Quincy requested that the January 19, 2005, order be vacated pursuant to Rule 60(a) of the Federal Rules of Civil Procedure and that this matter be reinstated and ordered to mediation.[3] In support of

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[2] Rule 41(b) provides:

> If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule — except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19 — operates as an adjudication on the merits.

FED. R. CIV. P. 41(b).

[3] Rule 60(a) provides:

that request, Quincy asserted that the Court's January 19, 2005, order was never served on any party, and thus that no party in this matter was aware that this case had been closed. According to Quincy, the parties were still discussing settlement and mediation options.

On November 9, 2006, the magistrate judge vacated the order closing this matter, granted Quincy's motion to reinstate this matter, and ordered this matter to mediation. The Defendants thereafter filed a motion to reconsider the magistrate judge's order reopening this matter. That motion was denied without explanation on September 28, 2007. In December, 2007, the magistrate judge ordered the parties to proceed to mediation in late January, 2008. The Defendants subsequently filed an informative motion to apprise the Court that their motion to postpone mediation had been granted by the district judge assigned to mediate this matter.

> The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

FED. R. CIV. P. 60(a).

The Court has reviewed the entire record in this matter. The Court issued its January 19, 2005, order pursuant to its "authority to dismiss a suit *sua sponte* for failure to prosecute" under Rule 41(b). *See Sebrell v. Phila. Police Dep't*, 159 Fed. Appx. 371, 373 (3d Cir. 2007) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962)). Significantly, however, there is no evidence in the record that the Court set a trial date before issuing its January 19, 2005, order. Therefore, because Quincy was not given an opportunity to prosecute this case, Quincy cannot be said to have failed to prosecute, as contemplated by Rule 41(b).

Furthermore, the record reflects that at least one of the parties in this matter did not receive notice of the Court's January 19, 2005, order. To deny Quincy its day in court because of a technical oversight would not be consistent with the Court's purpose of doing justice. *See*, *e.g.*, *Lundy v. Adamar of New Jersey*, 34 F.3d 1173, 1186 n.19 (3d Cir. 1994) ("The federal rules are designed to discourage battles over mere form and to sweep away needless procedural controversies that . . . deny a party his day in court because of technical deficiencies.") (citation omitted); *United States v. DeFalco*, 644 F.2d 132, 136 (3d Cir. 1979) (en banc) ("The essence of the system is that there be professional antagonists in the legal forum, dynamic

disputants prepared to do combat for the purpose of aiding the court in its quest to do justice."); *Deakyne v. Commissioners of Lewes*, 416 F.2d 290, 279 n.12 (3d Cir. 1969) (noting that "the dominant purpose of the courts must be to do justice rather than to vindicate procedural rules") (citation omitted).

For the reasons given above, it is hereby

ORDERED that the Court's January 19, 2005, order dismissing and closing this matter is **VACATED**; it is further

ORDERED that the Defendants' March 3, 2008, motion to dismiss is **DENIED** as moot.

Dated: March 12, 2008 **S_____**
CURTIS V. GÓMEZ
Chief Judge

Copies to: Elchanan I. Dulitz, Esq.
Sharon Schoenleben, Esq.
Henry C. Smock, Esq.